

Michelle T. Friend
HEDGER FRIEND, P.L.L.P.
2800 Central Avenue, Suite C
Billings, Montana 59102
(406) 896-4100
(406) 896-4199 - facsimile
mfriend@hedgerlaw.com

Attorney for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

TERRY ROD,) Cause No. CV -
)
Plaintiff,)
) PETITION AND NOTICE OF
vs.) REMOVAL
)
BNSF RAILWAY COMPANY, a)
Delaware Corporation,)
)
Defendant.)
)

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION

Please take notice that Defendant BNSF Railway Company hereby removes to this Court the state court action described below under 28 U.S.C. §§ 1331, 1332, 1441, and 1446 on the grounds of federal question and diversity jurisdiction.

1. This is a Notice of Removal Based on Diversity of Citizenship for an Action Pending in the District Court of the Thirteenth Judicial District of the State of Montana, in and for the County of Yellowstone.

BNSF is the named defendant in a civil action filed in the District Court of the Thirteenth Judicial District in and for Yellowstone County, styled *Terry Rod v. BNSF Railway Company*, Cause No. DV-19-0542 (the “State Court Action”). A copy of the Complaint and Jury Trial Demand (“Complaint”) and Summons served on BNSF is attached hereto as **Exhibit “A”**.

2. BNSF First Received the Complaint and Summons on October 9, 2020.

BNSF received Plaintiff’s Summons and Complaint on October 9, 2020. Removal is thus timely under 28 U.S.C. § 1446(b) as less than 30 days have passed since BNSF received the notice and the Summons and Complaint.

3. The State Court Action Concerns a Federal Question.

The State Court Action is a civil action over which this Court has jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by BNSF pursuant to 28 U.S.C. §§ 1331 and 1441 because Plaintiff has asserted a claim under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, et seq., which is a federal statute over which this Court properly exercises original jurisdiction. Complaint, ¶ 12.

4. The State Court Action Concerns an Amount in Controversy in Excess of \$75,000 and Involves a Plaintiff and Defendants of Diverse Citizenship.

The State Court Action is a civil action over which this Court has jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by BNSF pursuant to 28 U.S.C. §§ 1332 and 1441 because it is a civil action between citizens/entities of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

A. BNSF has a Good-Faith Basis to Believe that Plaintiff Seeks Damages of at Least \$75,000.

In his Complaint, Plaintiff has alleged claims under the Montana Human Rights Act, the ADA, §39-2-703, MCA, and the Montana Unfair Claims Practices Act. He has made claims for his unpaid wages and compensation, prejudgment interest, emotional distress and other damages. ¶ 12, 21-22. Upon information and belief, and given the nature of this case and Plaintiff's damages position in related state-agency proceedings, Plaintiff will seek over \$75,000 exclusive of interests and costs. *See* Declaration of Friend, attached hereto as **Exhibit "B"**. Thus, this case meets the amount in controversy requirement of 28 U.S.C. § 1332(a).

B. Plaintiff is a Citizen of Montana, Whereas Defendants Are Not.

BNSF is informed and believes that the Plaintiff is a citizen and resident of Montana. Complaint, ¶ 1. At the time of the filing of the Complaint and currently, Defendant BNSF is a Delaware corporation with its principal place of business in Texas and is, therefore, a citizen of Delaware and Texas, but not Montana. *See*

Declaration of Obermiller, attached hereto as **Exhibit "C"**; Declaration of Friend, attached hereto as **Exhibit "B"**.

Because none of the Defendants to this action are citizens of Montana, where this action was filed, complete diversity of citizenship exists and the diversity requirements for removal are met under 28 U.S.C. §§ 1332 and 1441.

4. BNSF will Notify the State Court of this Removal.

Pursuant to 28 U.S.C. § 1446(d) and D. Mont. L.R. 3.3(a), contemporaneously with the filing of this Notice of Removal, BNSF is filing with this Court a copy of its Written Notice of Removal in the State Court Action. *See* BNSF's Written Notice of Removal attached hereto as **Exhibit "D."**

5. Venue is Proper.

Removal to this Court, the Billings Division, is proper because the State Court Action was filed in this Court's district in the County of Yellowstone. See 28 U.S.C. § 1441(a); D. Mont. L.R. 1.2(c)(2).

Based on the foregoing, BNSF removes to this Court the State Court Action.

DATED this 19th day of October, 2020.

HEDGER FRIEND, P.L.L.C.

By: /s/ Michelle T. Friend

Attorney for BNSF Railway Company

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Hedger Friend, P.L.L.C., hereby certify that I served a true and complete copy of the foregoing on the following persons by the following means:

1-3 CM/ECF
 Hand Delivery
 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. Clerk, U.S. District Court

2. Jon M. Moyers
Moyers Law P.C.
3936 Avenue B, Suite D
Billings, MT 59102

3. Kathryn Kohn Troldahl
KOHN LAW, P.A.
P.O. Box 390074
Minneapolis, MN 55439

DATE: 10/19/2020

/s/ Michelle T. Friend.